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**IN THE
INDIANA TAX COURT**

LAKE COUNTY ASSESSOR,
CALUMET TOWNSHIP ASSESSOR,
and LAKE COUNTY PROPERTY TAX
ASSESSMENT BOARD OF APPEALS,

Petitioners,

V.

UNITED STATES STEEL CORPORATION,

Respondent.

[illegible]

Cause No. 49T10-0703-TA-19

ORDER ON RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

NOT FOR PUBLICATION
September 19, 2007

FISHER, J.

The Lake County Assessor, the Calumet Township Assessor, and the Lake

County Property Tax Assessment Board of Appeals (PTABOA) (collectively, Lake County) appeal the final determination of the Indiana Board of Tax Review (Indiana Board) valuing United States Steel Corporation's (US Steel) real property for the 2001 tax year (year at issue). The matter is currently before the Court on US Steel's motion for partial summary judgment. The issue for the Court to decide is whether the Indiana Board, during its hearing, properly determined that certain evidence offered by Lake County was inadmissible. For the following reasons, the Court determines that the Indiana Board properly excluded the evidence and GRANTS US Steel's motion for partial summary judgment.

FACTS AND PROCEDURAL HISTORY

The facts in this case are undisputed. US Steel owns and operates an integrated steel manufacturing plant in Lake County, Indiana. For the year at issue, US Steel's real property was valued at \$269,801,300 (\$59,582,900 for land and \$210,218,400 for improvements).

Believing that its real property was entitled to additional obsolescence depreciation, US Steel appealed its assessment to the PTABOA. At the time US Steel initiated its appeal, it had another appeal pending with the PTABOA regarding obsolescence depreciation on its 2001 personal property assessment. Before the PTABOA held a hearing on that matter, however, a settlement agreement resolving the personal property appeal was executed. The PTABOA subsequently denied US Steel's request for additional obsolescence depreciation on its 2001 real property assessment. US Steel then appealed its real property assessment to the Indiana Board.

During the Indiana Board's administrative hearing, Lake County attempted to

introduce into evidence the settlement agreement and other documents with respect to US Steel's 2001 personal property tax appeal, claiming that US Steel was improperly attempting to obtain a "double recovery." More specifically, Lake County argued that the evidence showed that US Steel previously received a reduction on its personal property for the same causes of obsolescence that it currently claimed reduced the value of its real property. US Steel objected to the introduction of those documents, arguing that they were irrelevant. The Indiana Board sustained US Steel's objection. The Indiana Board subsequently issued a final determination granting US Steel's requests for additional obsolescence depreciation.

On March 29, 2007, Lake County initiated an original tax appeal claiming, *inter alia*, that the Indiana Board erred in excluding its evidence because the evidence established that *res judicata* applied to US Steel's 2001 real property tax appeal. On April 27, 2007, US Steel moved for summary judgment with respect to this claim. On August 2, 2007, the Court heard the parties' oral arguments. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or

immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE ANN. § 33-26-6-6(e)(1) – (5) (West 2007). Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C).

Discussion

Lake County has asserted that *res judicata* barred US Steel's 2001 real property tax appeal. The doctrine of *res judicata* prevents the repetitious litigation of disputes that are essentially the same. *Afolabi v. Atl. Mortgage & Inv. Corp.*, 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006). *Res judicata* is divided into two branches: claim preclusion and issue preclusion. *Id.* In moving for summary judgment, US Steel argues that the Indiana Board properly excluded Lake County's evidence during its administrative hearing because neither claim preclusion nor issue preclusion applied to its 2001 real property appeal. The Court will discuss each of US Steel's arguments in turn.

I. Claim Preclusion

Claim preclusion applies when a final judgment on the merits has been rendered and acts as a complete bar to a subsequent action *on the same claim between those parties and their privies*. See *id.* When claim preclusion applies, all matters that were or that might have been litigated are deemed conclusively decided by the judgment in the previous action. *Id.* In order for claim preclusion to bar a subsequent claim, the following requirements must be satisfied: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the matter now in issue was, or could

have been, determined in the prior action; (3) the former judgment must have been rendered on the merits; and (4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies. See *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 851-52 (Ind. Tax Ct. 1990). In addition, it is helpful to inquire whether identical evidence will support the claims involved in both actions. *Afolabi*, 849 N.E.2d at 1173.

US Steel asserts its personal property appeal did not preclude its real property appeal because the two appeals differ in that in its personal property appeal it claimed excess operating costs reduced the value of its machinery and equipment; however, in its real property appeal, it claimed excess operating costs reduced the value of its improvements. (See Resp't Reply Br. at 6; Oral Argument Tr. at 31-32.) Lake County, on the other hand, asserts that those two appeals are the same because US Steel not only sought an obsolescence depreciation adjustment on its real and personal property due to the same excess operating costs, but also used the same methodology to establish that those costs caused its property to lose value. (See Pet'rs Br. at 14.) Lake County, however, is incorrect.

This Court has previously explained that real and personal property are distinct. See *Western Select Props., L.P. v. State Bd. of Tax Comm'rs*, 639 N.E.2d 1068, 1073 (Ind. Tax Ct. 1994) (stating that real and personal property are separate types of property). Thus, a claim challenging a personal property assessment is not the same as a claim challenging a real property assessment. Consequently, evidence that establishes an error on a personal property assessment does not necessarily establish an error on a real property assessment. See, e.g., *BP Prods. N. Am. Inc. v.*

Matonovich, 842 N.E.2d 901, 905-06, 906 n.8 (Ind. Tax Ct. 2006) (explaining why non-uniform real property assessments did not establish the non-uniformity of personal property assessments), *review denied*. Therefore, US Steel's 2001 personal property appeal did not preclude its 2001 real property appeal.

II. Issue Preclusion

Issue preclusion, also referred to as collateral estoppel, bars the subsequent relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former lawsuit or in certain administrative proceedings and the same fact or issue is presented in the subsequent lawsuit or administrative proceeding. See *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1037 (Ind. 1993); *Lindemann v. Wood*, 799 N.E.2d 1230, 1233 (Ind. Tax Ct. 2003). Issue preclusion may be used offensively or defensively depending upon how a party asserts the former judgment. See *Tofany*, 616 N.E.2d at 1037-39. Regardless of whether it is used offensively or defensively, however, issue preclusion is asserted against a party who previously had a full and fair opportunity to litigate an issue and lost. See *id.* at 1037 (citation omitted). Consequently, when issue preclusion applies, the former adjudication will be conclusive in the subsequent action even if the two actions are based on different claims. See *id.* To determine whether the litigation of an issue previously determined in an administrative proceeding is barred, the following factors are considered: (1) the issue sought to be estopped is within the statutory jurisdiction of the agency; (2) the agency acts in a judicial capacity; (3) both parties had a full and fair opportunity to litigate the issue; and (4) the decision of the administrative tribunal could be appealed to a judicial tribunal. *Lindemann*, 799 N.E.2d at 1233.

US Steel argues that issue preclusion is inapplicable in this matter because the issues in its 2001 personal and real property tax appeals are not identical. Specifically, US Steel explains the issue in its personal property appeal was whether excess operating costs constituted *abnormal obsolescence* with respect to its personal property; in contrast, the issue in its real property appeal was whether excess operating costs constituted *functional obsolescence* with respect to its real property. (See Resp't Br. at 15-18; Oral Argument Tr. at 6-8.) Thus, US Steel contends the issues are different because each issue involved different types of property and different forms of obsolescence. (See Resp't Br. at 15-18; Oral Argument Tr. at 6-8.) In response, Lake County asserts that the issues are the same because US Steel alleged the same causes of obsolescence reduced the value of both its personal and real property. (See Pet'rs Surreply at 4-6; Oral Argument Tr. at 21-22.) Again, Lake County is incorrect.

The fact that US Steel has claimed that the same *causes* of obsolescence negatively impacted the value of both its personal and real property does not convert two distinct issues into one. First, the forms of obsolescence at issue differ as evidenced by their respective definitions in Indiana's assessment regulations. Cf. 50 IND. ADMIN. CODE 2.2-10-7(e) (West 1996) (repealed 2002) *with* 50 IND. ADMIN. CODE 4.2-9-3(a) (West 1996) (defining functional and abnormal obsolescence respectively). Second, the assessment regulations confine the definition of functional obsolescence to real property and the definition of abnormal obsolescence to personal property. See 50 I.A.C. 2.2-10-7(e); 50 I.A.C. 4.2-9-3(a). See also *Western Select*, 639 N.E.2d at 1072-73. Therefore, establishing the presence of abnormal obsolescence with respect to personal property is not the same as establishing the presence of functional

obsolescence with respect to real property -- *even when the causes of that obsolescence are the same. Cf. Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1120 (Ind. Tax Ct. 1991) (explaining abnormal obsolescence requirements) *with Lacy Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1223 (Ind. Tax Ct. 2003) (explaining functional obsolescence requirements). Thus, issue preclusion did not apply to US Steel's 2001 real property tax appeal, as the matters at issue were not identical.

CONCLUSION

US Steel has demonstrated that the Indiana Board's exclusion of Lake County's evidence with respect to its 2001 personal property tax appeal and the settlement agreement was proper, as none of the evidence established that either branch of *res judicata* (i.e., claim preclusion or issue preclusion) applied to its 2001 real property tax appeal. The Court, therefore, now GRANTS US Steel's motion for partial summary judgment.

SO ORDERED this 19th day of September, 2007.

Thomas G. Fisher, Judge
Indiana Tax Court

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